



2025:CGHC:5098-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 738 of 2022**

Jitendra Kumar Sahu S/o Meghuram Sahu, aged about 38 years R/o Village-Nikum, Police Station Anda, District Durg Chhattisgarh, at present R/o Rasmada, Chowki-Anjora, District Durg Chhattisgarh.

... Appellant**versus**

State of Chhattisgarh, through the Station House Officer, Police Station Pulgaon, District Durg Chhattisgarh.

... Respondent

(Cause Title taken from Case Information System)

For Appellant : Mr. B.P. Singh, Advocate
For Respondent/State : Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****28.01.2025**

1. Heard Mr. B.P. Singh, learned counsel for the appellant as well as Mr. Sangharsh Pandey, learned Government Advocate, appearing for the appellant.
2. Today, though the matter is listed for hearing on I.A. No. 02 of 2025, which is an application for grant of temporary bail on

account of marriage of appellant's daughter, namely Saraswati, which is scheduled to be started from 21.02.2025, however, the said application has been rejected and with the consent of learned counsel for the parties, the appeal is heard finally.

3. This criminal appeal filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 19.04.2022 passed by the learned Eighth Additional Sessions Judge, Durg (C.G.) in Sessions Trial No. 153 of 2019, whereby the appellant/accused has been convicted for the offence punishable under Section 302 (two counts) of the Indian Penal Code (IPC) for committing murder of deceased Premin Bai (wife of the accused) and Rameshwar (paramour of deceased Premin Bai) and sentenced to undergo life imprisonment and fine of Rs.500/-, in default of payment of fine, additional RI for 01 year (on each count).
4. Case of the prosecution, in brief, is that Rajesh Mishra, Sub Inspector, registered an FIR No. 71/2019 (Ex.P-29) in Police Station Pulgaon, District Durg against the accused/appellant under Section 302 of IPC alleging that, on 17.06.2019 at about 12.30 pm, accused Jitendra Kumar Sahu had left the house for a walk towards the colony. After walking around, he went back to the room at about 02.00 pm and saw that the door was locked from inside. When he called out, Rameshwar Sahu resident of Rasmada opened, accused wife Premin Bai was lying on the floor

on a mat. Seeing both of them inside the room, the accused became furious and lost his temper and suspecting his wife Premin Bai, he started attacking her with the handle of axe which was lying there and when Rameshwar tried to intervene, the accused attacked him too with a deadly attack and started hitting him with the handle of axe, due to which both of them fainted on the spot. They were taken to the Government Hospital, Durg for treatment, where the doctor declared both of them dead. On giving information by Pramod Ramteke (PW-8), who is a ward boy posted in the Government Hospital, Durg, Merg Intimations about the death of the deceased Premin Bai and Rameshwar Prasad Sahu were recorded under Merg No. 0/19 vide Exs. P-18 & 19 respectively. Thereafter, numbered Merg Intimation was recorded vide Ex.P-28 under Merg No. 72/2019 and on the basis of which, aforesaid FIR was registered by the Investigating Officer.

5. During the course of investigation, Investigating Officer left for scene of occurrence and prepared Crime Details Form vide Ex.P-11. After summoning the witnesses vide Ex.P-1, inquest over the dead body of the deceased Premin Bai was prepared vide Ex.P-2 and further after summoning the witnesses vide Ex.P-4, inquest over the dead body of the deceased Rameshwar was prepared vide Ex.P-5. Thereafter, both the dead bodies were sent for conducting postmortem to Government Hospital, Durg vide Exs. P-23 & P-24, wherein postmortem over the dead body of deceased Premin Bai was conducted by Dr. Vipin Jain (PW-7)

and Dr. Kalpana Sharma, who found that there were large number of contusion marks over the body, on both shoulders, on the outer part of both arms, on the back, on both forearms, in elbows and on hands. The number of contusion marks were more in numbers and they were mixed together so it was not possible to count them. Their colour was red and brown. The skin was swollen, brown contusion marks were also present on the lower part of the stomach, buttocks, on the outer part of the thighs, in knees and on the feet. As per their opinion, the said injuries were caused by hard and blunt object and the cause of death was shock on account of consequential multiple trauma found all over the body (poly trauma) and the death was homicidal in nature.

6. Postmortem over the dead body of deceased Rameshwar Prasad was conducted by Dr. Vipin Jain (PW-7) and Dr. B. Deshmukh (PW-10), who found that there were large number of contusion marks on the body whose size was 12 cm x 4 cm, which were present on both the shoulders, outer parts of both arms, elbows, both forearms and both wrists, whose colour was reddish brown, two small scratches on left elbow and arm whose size was 0.5 cm x 0.5 cm and 1.5 cm x 0.5 cm, which were present on the dorsal part, in which red coloured blood was present, there were many contusion marks on the back, which were joined together, the skin was swollen due to which it was not possible to tell their number, beard and moustache were present on the face, external genitals were normal, after removing the skin of the genitals, no Smegma

was present, nor were any other spots present. There were also multiple injury marks on both legs; the tibia bone of the left leg was broken. There was a 0.5 x 0.5 cm scratch on the right leg which had clotted red blood. As per their opinion, the said injuries were caused by hard and blunt object and the cause of death was shock on account of consequential poly trauma and fracture of left tibia bone and multiple rib fractures and the death was homicidal in nature.

7. The dead body of deceased Premin Bai was handed over to Dileshwar Sahu (PW-1), who is her brother on supurdnama vide Ex.P-3 and dead body of deceased Rameshwar was handed over to Bhagwani Sahu (PW-4), who is his father on supurdnama vide Ex.P-12. Spot map was prepared vide Ex.P-20. Statements of witnesses Kachara Bai (Ex.P-3), Bhagwani Sahu (Ex.P-10), Mithlesh Sahu (PW-14), Thanu Singh Yadav (Ex.P-26), Pankaj Sahu (Ex.P-27) were recorded. Accused was taken into custody and his memorandum statement was recorded vide Ex.P-6 and on the basis of his memorandum statement, one wooden stick which was broken from middle was seized vide Ex.7, one Mobile of Micromax Company was seized vide Ex.P-8. From the place of incident, a piece of bloodstained concrete, a piece of plain concrete and one blood-soaked mat were seized vide Ex.P-9. Clothes of deceased Premin Bai, clothes of deceased Rameshwar and vaginal slides of deceased Premin Bai prepared by Doctor were seized vide Ex.P-25. Seized articles were sent for

chemical analysis to Forensic Science Laboratory, Raipur and receipt of the same was obtained vide Ex.P-31 and FSL report was obtained vide Exx. P-32 & P-33.

8. After completion of investigation, charge-sheet was presented before the Court of Judicial Magistrate First Class, Raipur under Section 302 of IPC, wherein Criminal Case No. 7507/2029 was registered and the case was committed to the Court of Sessions on 03.10.2019, wherefrom the case was transferred to the Court of Eighth Additional Sessions Judge, Durg on 17.10.2019 for conducting trial and disposal of the case.
9. When the charge of the offence punishable under Section 302 (twice) of the IPC was framed and read out to the accused, the accused denied having committed the crime and sought trial. The prosecution produced a total of 17 witnesses in the case and got a total of 38 documents certified by marking them as exhibits and when the prosecution evidence was declared closed, in the statement of the accused taken as per the provisions of Section 313 Cr.P.C., the accused declared himself innocent and by expressing his decision not to present any evidence on the occasion of defence evidence given by the Court, he himself ended the opportunity of defence evidence.
10. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 19.04.2022, convicted the appellant for offence under Section 302 (twice) of

the IPC and sentenced him as aforementioned, against which, this criminal appeal has been filed by the accused / appellant.

11. Mr. B.P. Singh, learned counsel for the appellant argued that the learned trial Court is absolutely unjustified in convicting the appellant for offence under Section 302 (twice) of the IPC as there was no reason or any motive has been proved by the prosecution to do such type of crime. There is no eye witness, the whole case is rest only on the basis of circumstantial evidence and memorandum statement of the accused given before the Police. He further argued that if the case of prosecution is taken as it is, then also it is proved that on the date of incident i.e. on 17.06.2019 at about 12.30 pm, accused Jitendra Kumar Sahu had left the house for a walk towards the colony. After walking around, he went back to the room at about 02.00 pm and saw that the door was locked from inside. When he called out, deceased Rameshwar Sahu (who was paramour of deceased Premin Bai) opened the door, and the accused saw that his wife Premin Bai was lying on the floor on a mat. Seeing both of them inside the room, the accused became furious and lost his temper and suspecting the character of his wife Premin Bai, on a heat of passion he started attacking her wife with the handle of axe which was lying there and when Rameshwar tried to intervene, the accused attacked him too with a deadly attack and started hitting him with the handle of axe, due to which both of them fainted. They were rushed to the hospital but they succumbed to their

injuries. He further submitted that there was no motive or intention on the part of the appellant to cause death of the deceased on seeing his wife Premin Bai along with his paramour deceased Rameshwar inside the room and the door was locked from inside, the accused became furious and lost his temper and on a heat of passion and on sudden provocation, the said incident took place. Therefore, the case of the appellant fall within the purview of Exception 4 to Section 300 of the IPC and the act of the appellant is culpable homicide not amounting to murder, and therefore, it is a fit case where the conviction of the appellant for the offence under Section 302 of the IPC can be converted/alterd to an offence under Section 304 Part-I or Part-II of the IPC and his sentence be reduced to RI for seven years. In support of his contention, he placed reliance in the matter of ***Ajit Singh Vs. State of Punjab***¹.

12. On the other hand, Mr. Sangharsh Pandey, learned Government Advocate, appearing for the respondent/State supports the impugned judgment and submits that the appellant has caused murder of two persons by deadly attacking them with a handle of axe due to which they both succumbed to their injuries, therefore, the learned trial Court has rightly convicted the appellant under Section 302 (two counts) of IPC and it is not a case where the appellant's conviction under Section 302 of the IPC can be altered/converted under Section 304 Part-I or Part-II IPC and as such, the instant criminal appeal deserves to be dismissed.

¹ 1989 Supp (2) SCC 147

13. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
14. **The first question for consideration would be whether the deceased died under unnatural circumstances ?**
15. The medical witness Dr. Vipin Singh (PW-7), who has conducted the postmortem of the dead bodies of both the deceased Premin Bai as well as Rameshwar Prasad Sahu, has stated that while conducting postmortem of the deceased Premin Bai, he has found that there were large number of contusion marks over the body, on both shoulders, on the outer part of both arms, on the back, on both forearms, in elbows and on hands. The number of contusion marks were more in numbers and they were mixed together so it was not possible to count them. Their colour was red and brown. The skin was swollen, brown contusion marks were also present on the lower part of the stomach, buttocks, on the outer part of the thighs, in knees and on the feet. As per his opinion, the said injuries were caused by hard and blunt object and the cause of death was shock on account of consequential multiple trauma found all over the body (poly trauma) and the death was homicidal in nature. The PM report of deceased Premin Bai is marked as Ex.P-15.
16. This witness further stated that while conducting postmortem of the deceased Rameshwar Prasad Sahu, he has found that there were large number of contusion marks on the body whose size

was 12 cm x 4 cm, which were present on both the shoulders, outer parts of both arms, elbows, both forearms and both wrists, whose colour was reddish brown, two small scratches on left elbow and arm whose size was 0.5 cm x 0.5 cm and 1.5 cm x 0.5 cm, which were present on the dorsal part, in which red coloured blood was present, there were many contusion marks on the back, which were joined together, the skin was swollen due to which it was not possible to tell their number, beard and moustache were present on the face, external genitals were normal, after removing the skin of the genitals, no Smegma was present, nor were any other spots present. There were also multiple injury marks on both legs; the tibia bone of the left leg was broken. There was a 0.5 x 0.5 cm scratch on the right leg which had clotted red blood. As per their opinion, the said injuries were caused by hard and blunt object and the cause of death was shock on account of consequential poly trauma and fracture of left tibia bone and multiple rib fractures and the death was homicidal in nature. The PM report of deceased Rameshwar Prasad Sahu is marked as Ex.P-16.

17. Thus, there is no reason to disbelieve the testimony of the medical witness Dr. Vipin Jain (PW-7). Hence, the trial Court after appreciating oral and documentary evidence available on record particularly relying upon the statement of Dr. Vipin Jain (PW-7) and PM reports (Exs.P-15 and P-16) has come to the conclusion that both the deceased died under unnatural circumstances.

18. After hearing learned counsel for the parties and after considering the submissions advanced by them, we are of the considered opinion that the finding recorded by the trial Court that both the deceased Premin Bai as well as Rameshwar Prasad Sahu died under unnatural circumstances is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.
19. **Now, the question for consideration would be whether the accused-appellant herein is the perpetrator of the crime in question ?**
20. Prosecution witness Dileshwar Kumar Sahu (PW-1), who is the brother of the deceased Premin Bai, stated in his statement that he knew the accused Jitendra Kumar Sahu, he is his brother-in-law. The deceased Preminbai was his elder sister. He did not know the deceased Rameshwar Sahu. He was a resident of Rasmada village. The accused and his sister also lived on rent in village Rasmada. He further stated that the incident took place about 6 months ago. It was an incident of 17.06.2019. He was returning from duty that day when he got a call on his mobile from his brother-in-law accused Jitendra Sahu, he said that he have killed his sister Premin, he bring his parents to Rasmada. At that time his father was not at his house, so he took his cousin Rakesh Sahu to the house of the accused in Sheetla Para Rasmada. At that time it was around 3:00-3:15 in the afternoon. He reached home and knocked on the door of the house of the accused, then

the accused opened the door, he saw inside the room his sister Premin Bai was lying on the ground in an injured condition and was writhing in pain and Rameshwar was lying in the veranda in an injured condition. After seeing his sister Premin in an injured state, he went to the house of his cousin Shesh Narayan, who lives in the same village, shouting for help. He told Shesh Narayan about the incident and said that his sister Premin has to be saved. Then he took Premin to the District Hospital in some person's Bolero car. There she was admitted for treatment. The concerned doctor started treatment and was given oxygen then after 10-15 minute told that Premin Bai was dead. He stated that his sister died due to injuries caused by assault made by the accused. In his cross-examination, this witness has denied the suggestion of the defence that accused had not informed him about the death of deceased Premin Bai in his mobile phone.

21. The second witness examined by the prosecution is Sheshnarayan Sahu (PW-2), In his statement, he has stated that on the date of the incident, Dileshwar came to his house in Rasmada to call him and told him that his brother-in-law Jitendra has killed his sister, she is in pain, come quickly. Then he called his younger brother Kaushal Sahu and told him to call the Bolero driver and take Premin to the hospital. Then he went to the accused's house with Dileshwar. He saw that Preminbai was in pain in an injured state, crying for help. She was lying on the ground and was injured. He, Dileshwar and his brother Kaushal

picked up Premin, put her in the Bolero vehicle and brought her to the District Hospital for treatment. She was admitted to the hospital. Premin was given oxygen in the casualty and a glucose bottle was administered to her. He had gone to the Electric Emporium to get money for Premin's treatment. When he returned after 10-15 minutes, Premin had died. In his cross-examination, this witness has denied the suggestion of the defence that when Dileshwar came to him, he told that some one has killed his sister Premin Bai, he himself has told that Dileshwar has told that accused Jitendra has killed. This witness further stated that when he reached the spot with Dileshwar, the deceased Preminbai was writhing in pain. The body of another deceased and the accused were present there. He denied the suggestion that the accused came there after they reached there. He further denied that the accused was not present at the spot and he is making a false statement in the Court.

22. Another prosecution witness Kachra Bai (PW-3), who was Sarpanch of village Rasmada has not supported the case of prosecution and was declared hostile. She is only a hearsay witness.
23. Another prosecution witness Bhagwani Sahu (PW-4), who is father of deceased Rameshwar Prasad Sahu, he has stated that the accused had called him in his mobile phone and asked him to come to his house and reaching to the house of accused, he found that his son Rameshwar was lying on the ground and foam

was coming out of his mouth and was not telling anything, thereafter, he was taken to Government Hospital Durg in 112 No. vehicle, where he was declared death. At this juncture, this witness was declared hostile and on a pointed question, he admitted that the accused had called him at his house. In his cross-examination, this witness has denied the suggestion of the defence that the accused had not called him to come at his house.

24. Other prosecution witnesses Dharti Ram Sahu (PW-5) and Mithlesh Sahu (PW-6) are also the hearsay witnesses and they have not supported the case of prosecution.
25. Pramod Ramteke (PW-8), is a ward boy posted in the Government Hospital, Durg, who has lodged Merg Intimation about the death of the deceased Premin Bai (Ex.P-18) and deceased Rameshwar Prasad Sahu (Ex.P-19).
26. Yogendra Kumar Bandhaiya (PW-9), is the Patwari who has prepared spot map of the incident site vide Ex.P-20.
27. Dr. B. Deshmukh (PW-10) has conducted MLC of the deceased Premin Bai before her death vide Ex.P-21 and prepared bed-head ticket vide Ex.P-22.
28. Rajkumar (PW-11) and Rajesh Mishra (PW-17) are the police personnel, who have recorded statements of the witnesses, memorandum statement of the accused and also investigated the matter and submitted the charge-sheet against the accused

before the Court concerned.

29. Other prosecution witnesses Rakesh Kumar (PW-12), Thanu Singh Yadav (PW-13), Ramakant Sahu (PW-14), Pankaj Sahu (PW-15) and Nandkumar Sahu (PW-16) all are hearsay witnesses and they have stated that they have heard that the accused had committed murder of the both the deceased.
30. Considering the aforesaid oral and documentary evidence, the learned trial Court has rightly held that it is the appellant-accused who has caused injuries over the body of both the deceased due to which they death. Accordingly, we hereby affirm the said finding.
31. The aforesaid finding brings us to the next question for consideration, whether the case of the appellant is covered within Exception 4 to Section 300 of the IPC vis-a-vis culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellant ?
32. The cause of death assigned in the post-mortem report of both the deceased as already noticed are 'shock on account of consequential trauma'. It is a trite law that "culpable homicide" is a genus and "murder" is its species and all "murders" are "culpable homicides, but all "culpable homicides are not "murders" as held by the Hon'ble Supreme Court in ***Rampal Singh Vs. State of Uttar Pradesh***². The intention of the accused must be

² (2012) 8 SCC 289

judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.

33. The Hon'ble Supreme Court in the case of ***Basdev Vs. State of Pepsu***³ has made the following observations :

“Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion.”

34. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, ‘intent’ and ‘knowledge’ and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe to treat ‘intent’ and ‘knowledge’ in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence

3 AIR 1956 SC 488

would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Indian Penal Code namely "intention" and "knowledge" has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted.

35. The Hon'ble Supreme Court in the matter of ***Sukhbir Singh v. State of Haryana***⁴ has observed as under:-

"21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The

4 (2002) 3 SCC 327

finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”

36. The Supreme Court in the matter of ***Gurmukh Singh v. State of Haryana***⁵ has laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under :

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;

5 (2009) 15 SCC 635

- (g) Whether the injury was caused without premeditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- (m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.”

37. Likewise, in the matter of ***State v. Sanjeev Nanda***⁶, their Lordships of the Supreme Court have held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It has further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.
38. Further, the Supreme Court in the matter of ***Arjun v. State of Chhattisgarh***⁷ has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in *Surinder Kumar v. UT, Chandigarh* [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under :(SCC p. 220, para 7)

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the

6 (2012) 8 SCC 450

7 (2017) 3 SCC 247

offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

21. Further in *Arumugam v. State* [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

“9. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means “unfair advantage”.

39. In the matter of *Arjun* (supra), the Hon'ble Supreme Court has

held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II of the IPC.

40. Further, the Hon'ble Supreme Court in the matter of ***Rambir v. State (NCT of Delhi)***⁸ has laid down four ingredients which should be tested to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (i) There must be a sudden fight;
- (ii) There was no premeditation;
- (iii) The act was committed in a heat of passion; and
- (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.”

41. The Hon'ble Supreme Court in a recent judgment in the case of ***Anbazhagan vs. The State represented by the Inspector of Police*** in Criminal Appeal No.2043 of 2023 disposed of on 20.07.2023 has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

“60. Few important principles of law discernible from

8 (2019) 6 SCC 122

the aforesaid discussion may be summed up thus:

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview

of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause

death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to

place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury,

degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the

circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

42. Reverting to the facts of the present case in light of principles of law laid down by their Lordships of the Supreme Court in the above-stated judgments (*supra*), it is quite vivid that on the date of incident i.e. 17.06.2019 at about 12.30 pm, accused Jitendra Kumar Sahu had left the house for a walk towards the colony. After walking around, when he came back to the room at about 02.00 pm, he saw that the door was locked from inside. When he called out, deceased Rameshwar Sahu (who was paramour of deceased Premin Bai) opened the door, and the accused saw that his wife Premin Bai was lying on the floor on a mat. Seeing both of them inside the room, the accused became furious, losing his temperament and suspecting the character of his wife Premin Bai, on a heat of passion, he started attacking his wife with the wooden plank (handle of axe) which was lying on the spot of incident and when Rameshwar tried to intervene, the accused attacked him too with a deadly attack and started hitting him with the said wooden plank, due to which both of them fainted and ultimately, succumbed to their injuries. Though there was no motive or premeditation on the part of the appellant to cause death of deceased, but on seeing his wife deceased Premin Bai with her paramour deceased Rameshwar Prasad Sahu inside the room which was locked from inside, he became furious and with

intention to cause death of deceased caused such injuries and by doing so, he must have had the knowledge that such injuries inflicted by him would likely to cause death of the deceased, as such, his case would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellant herein completely satisfies the four necessary ingredients of Exception 4 to Section 300 IPC *i.e.* (i) there must be a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a heat of passion and (iv) the appellant had not taken any undue advantage or acted in a cruel or unusual manner.

43. Considering the aforesaid facts and circumstances of the case and also taking into consideration that at present appellant-Jitendra Sahu is aged about 43 years, and he is in jail since 18.06.2019 and he has completed near about 05 years and 07 months, the conviction of the appellant under Section 302 of the IPC can be altered/converted to Section 304 Part-I of the IPC.
44. Accordingly, conviction of the appellant under Section 302 (two counts) of the IPC is set aside, however, he is convicted under Section 304 Part-I (two counts) of the IPC and sentenced to undergo rigorous imprisonment for 10 years.
45. The criminal appeal is **partly allowed** to the extent indicated hereinabove.
46. It is stated that the appellant is in jail, he shall serve out the remaining sentence as modified by this Court.

47. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head – Note

In cases of homicidal death, if both intent and knowledge are present, the offence would fall under Section 304 Part-I of the IPC, however, if the act is committed with knowledge but without the intent to cause death or bodily injury likely to result in death, it would be classified under Section 304 Part-II of IPC.